

## Similarities

- Provide for augmentation as an appropriation and a beneficial use (85-2-102)
- Apply to only closed basins
- Removes groundwater definition from each of the closed basins so the groundwater definition in 85-2-102 now applies.
- Effective on passage and approval

## Differences

## HB 138

- Defines augmentation (for water use act)
- Defines the term municipality (for water use act) – “municipal use” term was defined in DNRC rule – DNRC removed this definition from rule
- Defines stock water (for water use act)
- Removes exemption for surface water domestic in closed basins
- **Exemptions to the basin closure:**
  - ground water IF accompanied by augmentation plan
  - response actions related to natural resource restoration required by other laws
  - surface water use by municipality or stock
  - store water during high spring flows (50 ac. Ft or more impoundment)
  - nonconsumptive hydropower use
- an applicant for a groundwater permit in a closed basin must submit a report.
- The report must include –
  - analysis of connection between ground/surface
  - quantify depletions to surface water from the proposed appropriation (assumes groundwater withdrawal + surface water depletion)
- DNRC may issue a permit for groundwater if the augmentation

## HB 373

- Defines augment (for water use act)
- Defines augmentation plan – states that prior appropriator has to be adversely affected for an augmentation plan to be necessary (for water use act)
- Defines “induced infiltration or induced recharge” – water must be drawn from the surface water into the aquifer when the well is used at the requested flow rate and period of diversion (for water use act)
- Amends criteria for issuance of a permit and how adverse effect is determined –
  - recognizes that a priority of appropriation (senior water right) does not include the right to prevent changes in the condition of water occurrence if the prior appropriator can reasonably exercise their water right; and
  - must consider whether the cessation of diversion under the permit applied for would result in the increase in the source of supply
- Application for ground water must include a report addressing the effect, if any, on prior appropriators within the area of influence of the proposed project
- Report must include determination of whether or not the proposed pumping would

<p>plan provides for sufficient water to reasonably replace, <u>in each reach affected</u>, the amount of water that will be consumed by the proposed ground water use.</p> <ul style="list-style-type: none"> <li>▪ If a change in appropriation right is required to meet the needs of an augmentation plan the change in appropriation right application must accompany the other information.</li> <li>▪ Applicant must provide: <ul style="list-style-type: none"> <li>• application for beneficial use permit</li> <li>• hydrologic report</li> <li>• augmentation plan; and</li> <li>• change in appropriation right application (if one is necessary) chances are it will be since these are closed basins and there isn't any additional water left for appropriation.</li> </ul> </li> </ul>	<p>result in induced infiltration or induced recharge.</p> <ul style="list-style-type: none"> <li>▪ Department gets the report and determines if: <ul style="list-style-type: none"> <li>• (1) pumping <u>will not</u> result in induced infiltration or induced recharge</li> <li>• (2) pumping <u>will</u> result in induced infiltration or induced recharge <u>but</u> there is no adverse effect to prior appropriators</li> <li>• (3) pumping <u>will result</u> in induced infiltration or induced recharge <u>and</u> there is adverse effect to prior appropriators.</li> </ul> </li> <li>▪ If the determination is (1) or (2) above then the department processes the application</li> <li>▪ If the determination is (3) above then the applicant submits an augmentation plan</li> <li>▪ Augmentation plan must identify: <ul style="list-style-type: none"> <li>• the source of water from which the applicant proposes to augment from</li> <li>• the quantity of water proposed to augment the senior water right</li> <li>• the point of measurement or point of delivery where augmentation of the affected senior water right will occur.</li> </ul> </li> <li>▪ Once an augmentation plan is received that contains all of the required information the department processes the application</li> </ul>
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This cross walk table was prepared in an effort to provide a quick reference on the similarities and differences of HB 138 and HB 373 and is for informational purposes only.